

COPYRIGHT ROYALTY TRIBUNAL

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In the Matter of: :

CABLE COPYRIGHT ROYALTY :

DOCKET NO. CRT 89-2-87CD

DISTRIBUTION PROCEEDINGS - :

PHASE II :

- - - - - X

(This volume contains pages 150 through 232)

Room 458  
1111 20th Street, N.W.  
Washington, D.C.

Thursday, October 26, 1989

The hearing in the above-entitled matter was  
convened pursuant to Notice, at 10:00 a.m.

BEFORE:

MARIO F. AGUERO Chairman

J.C. ARGETSTINGER Commissioner

ROBERT CASSLER General Counsel

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C O N T E N T S

<u>WITNESS</u>	<u>EXAMINATION</u>			
	<u>VOIR</u>			
	<u>DIRE</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>TRIBUNAL</u>
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E X H I B I T S

<u>NUMBER</u>	<u>FOR</u> <u>IDENTIFICATION</u>	<u>IN</u> <u>EVIDENCE</u>
<u>Settling Devotional Claimants</u>		
1-X (Distant Systems 86 & 87)	--	221
2-X (Anal of Form 3 Fee-Gen of WCLF)	200	221
3-X (Anal of % Prime Time Bdcst Car'd on Dst Sig Att to WCLF-TV)	205	221
4-X (Sel Sts Car'd as Dist Sig)	208	221
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P R O C E E D I N G S

(10:05 a.m.)

CHAIRMAN AGUERO: We continue this morning with Devotional Claimants, Phase II, Cable Royalty Distribution. And we have Mr. Kennedy as the witness and as the lawyer.

Mr. Kennedy, would you stand up, please?

Whereupon,

ROBERT KENNEDY

was called as a witness and, having first been duly sworn, was examined and testified as follows:

CHAIRMAN AGUERO: Do you have an opening statement?

MR. KENNEDY: I just want to thank the Tribunal for allowing me to present our case before you. And with that, I will go on with my background information.

MR. GOTTFRIED: Is the witness going to testify only about his background, first? If so, I will reserve the voir dire.

CHAIRMAN AGUERO: Very good, sir.

Would you proceed, please?

DIRECT TESTIMONY

THE WITNESS: My name is Robert Kennedy. My address is 2055 Magnolia Drive, Clearwater, Florida. I am the Director of Special Projects and Cable Relations for Christian Television Corporation in Clearwater, Florida. I

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1 began my broadcasting career in 1966, and in 1975 received a  
2 Bachelor of Science degree in electronic media  
3 communications from Southwest Missouri State University in  
4 Springfield, Missouri.

5 From '66 to '69, I worked for two radio stations  
6 in Central Missouri, starting out at entry level as staff  
7 announcer and was promoted to management level positions as  
8 Program Director and Sales Manager; from '69 to '83,  
9 broadcasting led me into the field of television, where I  
10 worked for CBS-affiliate KLOR-TV in Springfield, Missouri,  
11 there I served in a number of positions, including  
12 supervisor in an award winning creative services and  
13 production department as Public Affairs Director, Program  
14 Director and Operations Manager. During this time I was  
15 also Executive Producer of the Jerry Lewis Telethon for 14  
16 years.

17 In 1974, KLOR-TV won the NATPE award for the best  
18 religious programming in the nation, of which I was  
19 Executive Producer. In 1983, the creative services and  
20 production department took the city's top award honors in  
21 several commercial production categories. As KLOR's program  
22 director and operations manager, my job included reviewing  
23 market analysis of syndicated programming, program  
24 purchasing and scheduling. Other responsibilities included  
25 doing all license renewals, community ascertainment, cable

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1 relations, FCC public file requirements, producing special  
2 events and program conception, writing and production.

3 During the latter part of 1983, I left the secular  
4 television field to work full-time as director of media for  
5 Cornerstone Church in Springfield, Missouri, where I  
6 supervised CS productions and ad agency productions,  
7 catering to the production of various Christian programming,  
8 commercial writing and producing, and planning and  
9 production of special Christian music events.

10 MR. GOTTFRIED: Mr. Commissioner, if the witness  
11 just wants to read the testimony, we have no objection to  
12 just accepting it in the written form. It is up to the  
13 witness.

14 THE WITNESS: That's fine. It will save time.

15 MR. GOTTFRIED: That was my idea. If the witness  
16 wants to do something else, summarize, that's fine, too.

17 THE WITNESS: No, that's fine. I did want to  
18 point out there are several changes. I think everyone got  
19 the changes to the testimony.

20 CHAIRMAN AGUERO: We will accept into the record  
21 Mr. Kennedy's testimony, the entire -- how many pages do you  
22 have in your testimony, Mr. Kennedy?

23 THE WITNESS: Just the introductory page there. I  
24 will give the overview of the direct case.

25 MR. GOTTFRIED: I have no problem with the first

1 two pages.

2 CHAIRMAN AGUERO: Very good, excellent.

3 MR. GOTTFRIED: Are we going to get to these  
4 amendments? That's not an issue yet, just voir dire, is  
5 that what we are doing?

6 CHAIRMAN AGUERO: Do you want to have the voir  
7 dire now?

8 MR. GOTTFRIED: Yes, just briefly.

9

10 VOIR DIRE

11 BY MR. GOTTFRIED:

12 Q Have you taken any courses in communication  
13 research?

14 A I took one course in college between 1966 and  
15 1975, I guess.

16 Q One course in that nine-year period? Do you  
17 remember when?

18 A I don't remember when, no.

19 Q How about statistical analysis, have you had any-

20 -

21 A It was included in that one course.

22 Q Do degrees?

23 A No.

24 Q Have you ever held the position dealing with  
25 communication research?

1 A No.

2 Q How about doing statistical analysis?

3 A No.

4 HR. GOTTFRIED: Mr. Commissioner, I have no  
5 problem with this witness appearing as a fact witness, but I  
6 would ask that he not be admitted as an expert in either  
7 communication research or statistical analysis.

8 THE WITNESS: That's fine.

9 CHAIRMAN AGUERO: We accept Mr. Kennedy.

10 THE WITNESS: Shall I give a brief overview now?

11 Just to go over briefly the direct case, there are  
12 several changes that I made. I think the overview of the  
13 direct case shows those.

14 MR. GOTTFRIED: I have to lodge an objection to  
15 these changes. It is not just an academic matter, we  
16 prepared our whole cross-examination based on numbers --

17 CHAIRMAN AGUERO: Based on the previous one?

18 MR. GOTTFRIED: Some of these, in fact, I can  
19 check quickly -- I mean, for example, to check these Form 3  
20 figures I would have to go through laboriously again the  
21 Larson Report and pull out Form 3s --

22 CHAIRMAN AGUERO: Also, the Tribunal, we have no  
23 knowledge of the changes Mr. Kennedy brings to us this  
24 morning. I think we should have a small meeting between the  
25 commissioners to make a decision on this, too.



1 Do you agree?

2 COMMISSIONER ARGETSINGER: Yes, I would like to  
3 hear both parties arguments though on this, why we should  
4 have it and --

5 CHAIRMAN AGUERO: And then we will make a decision  
6 on the changes.

7 THE WITNESS: The only thing -- I changed some of  
8 the things to Form 3 cable systems, rather than total  
9 distant cable systems, which would clarify. It makes it  
10 easier, in my opinion, to understand there are less Form 3  
11 cable systems than there are total distant systems. And  
12 they are easier to find. I would be glad to go through the  
13 entire documentation report and show you how I did those.

14 I also have included the handwritten exhibit which  
15 will breakdown for you each one of those systems, both  
16 distant and Form 3 systems.

17 COMMISSIONER ARGETSINGER: May I ask, Mr.  
18 Gottfried, have you had an opportunity to review what these  
19 changes are, or are you just getting them now, like we are?

20 MR. GOTTFRIED: Well, when we walked into the  
21 room, they were on the table. At first I thought -- well,  
22 it really is quite a task to go through every one of 86  
23 pages of Larson report of 40 lines. We prepared our cross-  
24 examination based on certain claims made.

25 COMMISSIONER ARGETSINGER: I wonder if a recess of

1 10-minutes would help, and then you could come back and say,  
2 well, we can't have this, or we can keep this one?

3 It is a short time to look at it, also, I know.

4 MR. GOTTFRIED: Well, I can tell without looking  
5 at it further to go through Form 3s would take at least half  
6 the day, for a paralegal -- I can tell you how long it took  
7 me when we did it.

8 CHAIRMAN AGUERO: You are right, according to what  
9 we see here there are a lot of changes in here. If you  
10 cross him on the former, the former testimony, then it would  
11 have no validity for us.

12 MR. GOTTFRIED: I understand. If it is admitted,  
13 I don't know how to cross-examine.

14 CHAIRMAN AGUERO: Let's take a recess, please.

15 (Off the record)

16 CHAIRMAN AGUERO: Commissioner Argetsinger,  
17 please.

18 COMMISSIONER ARGETSINGER: Mr. Kennedy, could you  
19 go through some of these changes, or all of these changes  
20 and tell us the ones that are simply corrections and which  
21 ones are new information you are presenting for the first  
22 time?

23 THE WITNESS: Okay, let's go through each page  
24 individually.

25 Okay, first of all, the two handwritten pages.

1 MR. GOTTFRIED: Are you going through it in order?

2 COMMISSIONER ARGETSINGER: At the back --

3 THE WITNESS: That was broken down so you could  
4 see easily the total number of distant systems, labeled  
5 "distant systems", in 1987 and 1986, too.

6 COMMISSIONER ARGETSINGER: Is this contained  
7 elsewhere in your previous testimony?

8 THE WITNESS: I don't -- I am not sure if I have  
9 included this in previous testimony, or not. This was in  
10 rebuttal to this (indicating), that we received yesterday  
11 from --

12 CHAIRMAN AGUERO: The numbers introduced  
13 yesterday.

14 MR. GOTTFRIED: That's not in evidence.

15 COMMISSIONER ARGETSINGER: Will you be introducing  
16 that in evidence?

17 MR. GOTTFRIED: That was part of the cross-  
18 examination.

19 THE WITNESS: I thought it was admitted as  
20 evidence yesterday.

21 COMMISSIONER ARGETSINGER: Perhaps this might be  
22 more properly put in rebuttal. You will have an opportunity  
23 to rebut this.

24 THE WITNESS: Okay, fine.

25 MR. GOTTFRIED: You may refer to it.

1 CHAIRMAN AGUERO: We will accept this exhibit 1-X  
2 from the Devotional Settling Claimants.

3 MR. GOTTFRIED: Well, I will introduce it during  
4 Mr. Kennedy's cross-examination, Commissioner. I will show  
5 it to him and we will go through it.

6 CHAIRMAN AGUERO: What about this document here?  
7 Will we accept it in rebuttal?

8 COMMISSIONER ARGETSINGER: I don't know, you can  
9 attempt to put it in, in your rebuttal case.

10 THE WITNESS: I am not sure I included all that in  
11 here, or not. I am just going to have to go through for  
12 each individual.

13 CHAIRMAN AGUERO: You mentioned this exhibit in  
14 your change -- whatever we have here.

15 THE WITNESS: No.

16 CHAIRMAN AGUERO: You don't mention this in here?

17 THE WITNESS: I don't mention it, no. I did  
18 include some of the numbers on one of them in here.

19 Let's go through each individual page, starting  
20 with page 2. The middle paragraph, last sentence, we  
21 increased our Form 3 distant subscribers by 92 percent. I  
22 have there the explanation of how I figured that, 1986 Form  
23 3 subscribers was 273,914; in '87 there were 525,644, and  
24 that computation equals 91.9, or 92 percent.

25 MR. GOTTFRIED: This is the one, Mr. Commissioner,

1 I am not in the position to verify. How do we do it, other  
2 than to go through line-by-line, each of the Larson pages?

3 THE WITNESS: That's exactly how we are going to  
4 have to do it. And we can do it today.

5 COMMISSIONER ARGETSINGER: So you are saying that  
6 this information, Mr. Kennedy, is in the Larson material?

7 THE WITNESS: Yes, sir.

8 CHAIRMAN AGUERO: This information included in the  
9 exhibit that you introduced this morning to us, these  
10 numbers?

11 THE WITNESS: That was taken from the Larson  
12 material.

13 MR. GOTTFRIED: Mr. Commissioner, we haven't had a  
14 chance to cross-examine Mr. Larson on the accuracy of what  
15 is identified as a Form 3 or Form 1, or Form 2 system. It  
16 hasn't been raised as an issue. Mr. Larson has already  
17 testified and is no longer subject to cross-examination on  
18 the derivation of these figures, and it is an imposition for  
19 us to have to sit here while we go through 70 pages and try  
20 to hand calculate the accuracy.

21 I am not in the position to prepare exhibits, and  
22 I am not in the position to cross-examine this witness  
23 effectively on this material. And, therefore, I object to  
24 its introduction.

25 CHAIRMAN AGUERO: We are going to have a two-

1 minute recess.

2 COMMISSIONER ARGETSINGER: Are there any other  
3 matters we should talk about? This is one matter, are there  
4 any others that you feel --

5 MR. GOTTFRIED: I think also as to Form 3 -- THE  
6 WITNESS: Most of them are Form 3 systems, yes.

7 CHAIRMAN AGUERO: Okay, let's take a recess.

8 (Whereupon, a short recess was taken)

9 CHAIRMAN AGUERO: The material is submitted this  
10 morning by CTC will not be accepted into the record. This  
11 is in the nature of new material, rather than correction of  
12 existing material, and affords no opportunity for opposing  
13 counsel for cross-examination. This material may, or may  
14 not be offered in rebuttal, subject to all legitimate  
15 objections at that time.

16 MR. GOTTFRIED: Thank you, Your Honor.

17 CHAIRMAN AGUERO: I think we have time to go to  
18 the film now.

19 MR. GOTTFRIED: Before we watch the film, to make  
20 the record clear, it is my understanding that the Tribunal  
21 has admitted the film, based on Mr. Kennedy's statement and  
22 his response to our objection that the videotape -- I am  
23 quoting now, "The videotape was presented so the Tribunal  
24 would have some idea of what our programming was like. This  
25 tape was not made to persuade the Tribunal's opinion one way

1 or the other, but simply to let them view the samples of  
2 copyrighted programs we have claimed in this proceeding"?

3 CHAIRMAN AGUERO: Yes, sir.

4 MR. GOTTFRIED: Thank you.

5 (Whereupon, the videotape was shown)

6 CHAIRMAN AGUERO: Mr. Kennedy.

7 THE WITNESS: The changes that were initiated in  
8 my testimony were because the Settling Devotional Claimants'  
9 introduction of Exhibit 1-X -- their findings indicated that  
10 there was a mistake in Thomas Larson's calculations here on  
11 WOAY in one instance -- it struck down from three distant  
12 systems down to one. That changed my entire testimony, and  
13 instead of going through insignificant distant systems, it  
14 seemed more time-worthy to go through and change the Form 3  
15 systems, rather than change my testimony to indicate all the  
16 other distant systems, which seemed to be insignificant.

17 So I am at a total loss as to where to go from  
18 this point on. My original sheets have all been changed and  
19 my notations where I had the original calculations for  
20 distant systems has been erased. I can make clean copies  
21 for you and I will be glad to go through this as best I can.

22 There was a correction, rather than a change, and  
23 that is on page 6. The second paragraph, instead of 23.3  
24 percent, with the change indicated yesterday, it is now an  
25 18.7 percent increase.

1 And on page 13, the second paragraph says, "For  
2 example, in 1986, 30 distant cable systems -- that should be  
3 32. In 1987, 37 distant cable systems, plus one part-time  
4 cable system, carried Joy Junction, an increase of 18.7  
5 percent."

6 CHAIRMAN AGUERO: 18.?

7 THE WITNESS: 18.7 percent. You have the  
8 corrected sheet there, I made copies for everyone, page 13.

9 CHAIRMAN AGUERO: Yes, we had 23.3 percent.

10 THE WITNESS: And Sole Act increased because two  
11 of the systems were struck from WOAY, that knocked the  
12 substantial 50 percent increase down to 33.3 percent on  
13 distant signals -- 33.3 percent.

14 And I have struck out the very next paragraph, the  
15 station growth of 130 percent in the Top 50 markets and 20  
16 markets indicates both distant and local, and it was  
17 laborious for me to go through and compute all that again.  
18 So, I will distract that.

19 On page 14, correction, the first paragraph  
20 instead of Children's Blocks 21 times a week it is 25 times  
21 per week.

22 CHAIRMAN AGUERO: Where is that?

23 THE WITNESS: The first paragraph, page 14, the  
24 top of the page.

25 CHAIRMAN AGUERO: Twenty-one times per week?



1 THE WITNESS: No, 25 times per week.

2 And strike one 37 of the 38, it was on 38 distant  
3 cable systems.

4 CHAIRMAN AGUERO: Thirty-eight.

5 THE WITNESS: An increase of 18.7 percent since  
6 1986.

7 There are other corrections, on page 15, Item No.  
8 6, Conclusion, I had changed CTC distant system subscribers  
9 to Form 3, but that won't be allowed, so the third item  
10 down, CTC grew 8 percent on distant systems, that's  
11 incorrect, that is 14.8.

12 MR. GOTTFRIED: In the Top 50 markets?

13 THE WITNESS: 14.8 percent in the Top 50 markets.  
14 And the next line, in the Top 20 markets, CTC increased  
15 instead of 5 percent that should be 25 percent.

16 And I believe that is all of the corrections.

17 CHAIRMAN AGUERO: Mr. Gottfried.

18 MR. GOTTFRIED: I think I will accept that changes  
19 if I might ask a couple of questions, just so I can  
20 understand what was done.

21 CHAIRMAN AGUERO: Would you do so, please?

22 FURTHER VOIR DIRE

23 BY MR. GOTTFRIED:

24 Q Mr. Kennedy, you say you eliminated the three  
25 stations that we talked about on WOAY, is that correct?

1 A Yes.

2 Q What did you do about the Cammerillo, California  
3 station?

4 A That was not introduced as a change.

5 Q Did you change the Cammerillo?

6 A No.

7 Q Did you go and verify what was, in fact, carried  
8 distant last night?

9 A I don't have any information on the report.

10 Q You never verified --

11 A No, I haven't.

12 Q Did you ask Mr. Larson last night to verify the  
13 remaining systems were, in fact, carried distant?

14 A Mr. Larson left town immediately after the hearing  
15 yesterday.

16 Q Is that answer to my question no?

17 A Yes.

18 Q Have you ever asked him to do that?

19 A No. I assumed that was his responsibility.

20 Q So the information that you have now given us is  
21 simply the raw data from the Larson material with the two  
22 WOAY systems subtracted, no further verification and no  
23 change in the Cammerillo, California system, is that  
24 correct?

25 A That is correct.

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1 MR. GOTTFRIED: Subject to that cross-  
2 examination, I have no objection to the admission.

3 CHAIRMAN AGUERO: Thank you very much.

4 Would you proceed, please?

5 MR. GOTTFRIED: Are you going to rely on the  
6 written testimony?

7 THE WITNESS: If I could, I would just rely and  
8 save the Tribunal's time, on just my written testimony here.

9 CHAIRMAN AGUERO: Okay.

10 CROSS-EXAMINATION

11 BY MR. GOTTFRIED:

12 Q Mr. Kennedy, looking at the general structure of  
13 this testimony, is it fair to say that you have gone back to  
14 the five criteria that the Tribunal has set for  
15 distributions of awards?

16 A That's correct.

17 Q And if I started on page 7, what I want to know--  
18 you have a summary that goes from page 3 to page 7.

19 A Uh-huh.

20 Q Yes, to the middle of 7 -- is it fair to say that  
21 everything that you say in the summary is repeated again  
22 when you get around to the case?

23 A Yes.

24 Q Okay. I guess the brief history of CTC, it talks  
25 about -- on the top of page 3, it talks about six full power

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1 stations.

2 A That's correct.

3 Q Is it my understanding that five of those have no  
4 distant signal carriage, the only one with distant signal  
5 carriage is WCLF?

6 A That's correct.

7 Q And the satellite network you talk about, that has  
8 nothing to do with distant signal carriage?

9 A It does in effect that CTBN and some of the other  
10 distant stations do draw programs off of the satellite.

11 Q They take it off, like Dr. Clark talked about  
12 yesterday?

13 A That's correct.

14 Q But is that shown also as a cable network on some  
15 cable systems?

16 A CTC?

17 Q Yes.

18 A Cable systems do pick it up, but we are not known  
19 as a cable network, no.

20 Q Let's go to page 7.

21 A (Perusing document)

22 Q Let's talk about harm first.

23 A Okay.

24 Q On page 8 you talk about loss of control. Now,  
25 that applies to everybody who appears before this Tribunal,

1 isn't that right?

2 A That's correct.

3 Q There is no special way that you lose control that  
4 nobody else loses control?

5 A I am not sure what the other criteria is for other  
6 people. All I know is how we have lost control.

7 Q You've lost control because you can't stop a cable  
8 system from picking it up as a distant signal, isn't that  
9 right?

10 A That's correct.

11 Q And neither can anybody else?

12 A That's true.

13 Q Now, let's talk about this loss of funds, I find  
14 that a little difficult to follow. So we will have to go  
15 through it slowly. If I can, let's take a concrete example,  
16 all right?

17 A All right.

18 Q Let's take WOAY and let's assume that the White  
19 Sulphur Springs station really did carry it as a distant  
20 signal, although we now know that's not true. So now we  
21 have people watching your program in White Sulphur Springs,  
22 is that right?

23 A That's right.

24 Q Now, it may have been on a local signal in White  
25 Sulphur Spring already, that's possible somewhere in the

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1 country, is that correct?

2 A Yes.

3 Q And if that's correct, then you know about those  
4 people and you can send out your fliers to them, right, if  
5 it is on a local signal?

6 A Yes.

7 Q If you are giving it to them?

8 A Right.

9 Q Okay, so let's assume -- that's not the situation  
10 you are complaining about, is it?

11 A No.

12 Q You are complaining about -- assume it is on a  
13 distant signal in White Sulphur Springs, and it is not  
14 carried as a local signal there, right?

15 A Yes.

16 Q Isn't it true that more people are watching your  
17 program now than there were before? People in White Sulphur  
18 Springs who can watch Joy Junction, who couldn't watch it  
19 before?

20 A No, that's not really always true, because we get  
21 letters from people saying, "I was happening cross the  
22 channel and noticed your program". And not everyone might  
23 be aware of it.

24 Q Listen to my question, there are some people in  
25 White Sulphur Springs now who can see Joy Junction, isn't

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1 that right?

2 A That's correct.

3 Q And they couldn't see it before it was carried as  
4 a distant signal, isn't that right?

5 A That's correct.

6 Q And you are saying you are harmed because those  
7 people could watch your program, is that your argument?

8 A No, I am harmed because I am saying that there are  
9 a lot of people in White Sulphur Springs that might not know  
10 about it, and if they knew about the station broadcasting,  
11 or the cable system broadcasting our programming, we could  
12 notify by newspaper ads, churches and get a larger audience.

13 Q I understand that -- maybe I misunderstand, but to  
14 me that's a loss potential benefit. I am trying to focus on  
15 the harm now. You've got these folks -- got the reporter  
16 sitting in White Sulphur Springs, all right, and in 1986,  
17 that program wasn't on WOAY, correct?

18 A Uh-huh.

19 Q In 1987 that program is on WOAY?

20 A Correct.

21 Q In 1986 you couldn't see that program, is that  
22 right?

23 A That's correct.

24 Q And in 1987 you could see that program?

25 A That program was available.

1 Q She could see it, it was available for her to  
2 watch.

3 A She had to know it was there.

4 Q She could see it, right?

5 A If she knew it was there, yes.

6 Q If she knew it was there, she could see it.

7 A That's correct.

8 Q And you are harmed because she could watch it?

9 A You do not --

10 Q All right, let's get to the argument.

11 A Okay.

12 Q You say you couldn't send her fund-raising  
13 material, is that right?

14 A If we don't know that WOAY is carrying that  
15 station, no. That's the whole factor for the harm.

16 Q Couldn't you call WOAY and find out whether the  
17 system is on the cable?

18 A First of all, let me --

19 Q Mr. Kennedy, answer my question.

20 A Pardon?

21 Q Could you call WOAY and ask them what cable  
22 systems are carrying them?

23 A If we knew WOAY was carrying us, yes. We didn't  
24 find out WOAY was carrying us until 1989. They were  
25 carrying us in 1987.

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1 Q Could you have called Mr. Larson and found out  
2 where you were carried as distant signals?

3 A How could he find that out? He has to know the  
4 station, right? He has to know the station. WOAY was  
5 carrying CTC programming without our knowledge.

6 Q And they didn't have your permission to carry it?

7 A No. I am not saying that WOAY was the station,  
8 but there are stations that do this. You are using the  
9 example of WOAY.

10 COMMISSIONER ARGETSINGER: Mr. Kennedy -- excuse  
11 me -- how would WOAY get your programming?

12 THE WITNESS: Okay, WOAY was picked up as carrying  
13 Sole Act, one of our programs. There are stations that we  
14 find out through Larson's report -- for instance, we have  
15 never done a data report by Larson, except in 1986, and then  
16 again this year.

17 COMMISSIONER ARGETSINGER: How did they get Sole  
18 Act? How did they get it?

19 THE WITNESS: It was sent to them -- our producer  
20 of Sole Act was notified that that particular station wanted  
21 that particular program.

22 COMMISSIONER ARGETSINGER: Well, shouldn't you  
23 have known then that they were using it, if they called you  
24 and asked you for it, or wrote you and ask you for it?

25 THE WITNESS: Maybe I am not making myself clear.

1 The loss of funds that we are talking about here, the harm  
2 that I am talking about here is when we discover through a  
3 report like this that two years ago we were on a television  
4 station, or a cable system, that we did not know existed,  
5 until two years later.

6 That's what this Larson report is all about.

7 COMMISSIONER ARGETSINGER: How did this station  
8 get the tape?

9 THE WITNESS: Well, they pick us up off of  
10 satellite.

11 COMMISSIONER ARGETSINGER: They could pick you up  
12 off of satellite?

13 THE WITNESS: That's correct.

14 Now, in that particular case, WOAY, we sent the  
15 tape to them. We were notified by that station, but there  
16 were stations in there and cable systems that we did not  
17 know, who were picking up, off the air, without our  
18 permission. And then all of a sudden we see that we are on  
19 --

20 COMMISSIONER ARGETSINGER: But when you send up to  
21 a satellite don't you assume people will take it -- sort of  
22 saying "take me"?

23 THE WITNESS: Yes, that's true. But if we know  
24 who is taking us, we can promote ourselves and then send  
25 direct mail pieces to them and hope to get funds for our

1 stations.

2 COMMTSSIONER ARGETSINGER: But doesn't this happen  
3 to every religious broadcaster when they send it up by  
4 satellite, they don't know who is going --

5 THE WITNESS: I am sure that is true.

6 CHAIRMAN AGUERO: You don't charge anything for  
7 your programming?

8 THE WITNESS: No, we don't.

9 CHAIRMAN AGUERO: You rely on contributions?

10 THE WITNESS: We have two ways of raising funds,  
11 that is petitioning on the telephone and direct mail, which  
12 is again, petitioning, and we sell time to programs like the  
13 700 Club, Jerry Falwell, PTL and raise funds that way.

14 CHAIRMAN AGUERO: You say you are harmed because  
15 Sole Act was broadcast without your knowledge?

16 THE WITNESS: We are harmed when anybody takes our  
17 program --

18 CHAIRMAN AGUERO: But your programs are for free?

19 THE WITNESS: We are harmed because we don't have  
20 access to those people, to send direct mail --

21 CHAIRMAN AGUERO: To send letters, mail and  
22 telephone calls, or whatever methodology you use to collect  
23 funds?

24 THE WITNESS: That's correct.

25 COMMTSSIONER ARGETSINGER: But it seems like this

1 is something that is within your control.

2 THE WITNESS: No, it's not in our control.

3 COMMISSIONER ARGETSINGER: Why would you send it  
4 up on satellite?

5 THE WITNESS: Let me give you an example, we are  
6 sending our program up on the satellite, your station, or  
7 cable system out in North Dakota and you say, "I like what I  
8 see, I am going to carry that and provide it to my  
9 subscribers". So you are carrying it. We don't know  
10 anything about it.

11 Here this little town in North Dakota, with all  
12 these people in it, are getting that program and they are  
13 benefitting from it, but we are not.

14 COMMISSIONER ARGETSINGER: Well, why do you send  
15 it up on satellite, then?

16 THE WITNESS: We send it up on satellite so people  
17 can benefit but that is one method of raising funds, too,  
18 for the station. We must have people --

19 COMMISSIONER ARGETSINGER: Would you expect the  
20 stations to write you back and say, "Hey, we've got your  
21 show"?

22 THE WITNESS: Some do. We definitely would want  
23 that to happen.

24 COMMISSIONER ARGETSINGER: So you are saying you  
25 are harmed when they don't let you know --

1 THE WITNESS: That's correct.

2 CHAIRMAN AGUERO: Do you have any system to  
3 control your programming, to find out that your signal has  
4 been picked up by some other station in Wyoming, or Texas,  
5 or whatever? You don't have any system at all?

6 THE WITNESS: No.

7 CHAIRMAN AGUERO: No control?

8 THE WITNESS: There is no control, that's true.

9 COMMISSIONER ARGETSINGER: Do you put anything in  
10 your programming that says to the viewer if you see us,  
11 write us?

12 THE WITNESS: Sure, practically every program we  
13 have encourages people to write or call.

14 COMMISSIONER ARGETSINGER: And that way you find  
15 out?

16 THE WITNESS: That's how we find out.

17 BY MR. GOTTFRIED:

18 Q And you don't require licensing agreements from  
19 the stations that pick you up?

20 A Not for our programming.

21 Q What compensation -- you could require licensing  
22 agreements, couldn't you?

23 A I suppose so.

24 Q But you've made the decision not to?

25 A That's correct.

1 Q But you want compensation from this Tribunal  
2 because of that decision?

3 A Because of that decision?

4 Q If you had the licensing agreements, you would  
5 know what stations you were on, wouldn't you?

6 A If they notified us, yes.

7 Q If you required a licensing agreement to any  
8 station -- I am not talking about an outlaw unit, or an  
9 infringement -- if you put on the satellite and anyone that  
10 wants to pick this up has to get a license from us, free,  
11 cost, whatever, you would know who picked it up, wouldn't  
12 you?

13 A If there were no outlaws, like you said.

14 Q I am talking about the people who obey the law.

15 A Sure.

16 Q But you don't do that?

17 A No.

18 Q And you want compensation now because you don't do  
19 that?

20 A No.

21 Q You could get even more money from those people,  
22 if they knew you were on, isn't that what you are  
23 complaining about?

24 A Yes.

25 CHAIRMAN AGUERO: Mr. Kennedy, do you have any

1 knowledge about CBN? How do they collect their funds from  
2 the stations or cable systems that pick up their  
3 programming?

4 THE WITNESS: I would assume they purchase time on  
5 television stations like ours, that's one way.

6 CHAIRMAN AGUERO: They aren't giving it up for  
7 free?

8 THE WITNESS: Not that I am aware of, I don't  
9 know that for a fact.

10 MR. GOTTFRIED: Mr. Chairman, Mr. Clark testified  
11 as to that matter yesterday, I believe, and I think -- you  
12 can check the transcript, but I believe he said in some  
13 instances CBN pays, and in some cases CBN provides  
14 programming for free, and in some cases CBN pays for its  
15 programming.

16 Maybe I could ask a question.

17 BY MR. GOTTFRIED:

18 Q Would it surprise you to know that CBN requires a  
19 licensing agreement of any station that wants to pick its  
20 programs off the satellite?

21 A No, it wouldn't surprise me.

22 Q Or the cable system?

23 A No.

24 CHAIRMAN AGUERO: You've answered my question.  
25 Thank you very much.

1 MR. GOTTFRIED: That's all I have with harm.

2 If the Commissioners have any further questions.

3 COMMISSIONER ARGETSINGER: I may later.

4 Please move on, and I hope you don't mind me  
5 jumping in from time to time.

6 MR. GOTTFRIED: I have always taken the position  
7 in courts that it doesn't matter if I mind anyway, but I  
8 don't mind.

9 COMMISSIONER ARGETSINGER: Well, sometimes I am on  
10 the other side of the bench, too, so I know what you mean.

11 BY MR. GOTTFRIED:

12 Q Let's take the benefits now. You talk about this  
13 variety, and I guess I understand that --

14 CHAIRMAN AGUERO: It is on page 9?

15 MR. GOTTFRIED: At the bottom of page 9.

16 BY MR. GOTTFRIED:

17 Q You were here yesterday for Dr. Clark's testimony,  
18 is that right?

19 A Yes.

20 Q And you heard his testimony that what cable  
21 operators care about is having a flagship program, to  
22 attract a core of devotional audience, do you recall that?

23 A I recall that.

24 Q You haven't brought us an expert who would deny  
25 that claim, have you?



1 A No.

2 Q And do you have any data that would deny that  
3 claim? Do you have any surveys of cable operators?

4 A That would deny that a flagship program draws  
5 audience?

6 Q That that's what the cable operators want?

7 A I have no knowledge whether it would or not.

8 Q So you just don't know what cable operators want  
9 to attract that audience?

10 A I object to that. I don't mean to say that I  
11 don't know. I have talked to every single cable operator  
12 that carries WCLF and WHTM in Nashville, Tennessee. I do  
13 know they like the variety of Christian programming.

14 Q But you don't know what TBS wants?

15 A No, I have no idea.

16 Q Or WOR?

17 A No.

18 Q Or WGN?

19 A No.

20 Q Or any of the 10 largest stations carried in the  
21 Nielsen study?

22 A No.

23 Q How about the 119 stations carried in the Nielsen  
24 study, you don't know about any of those?

25 A No.

1 Q Or the cable systems that carry those 119  
2 stations?

3 A I have no idea.

4 Q At the top of page 10 it talks about 168 hours of  
5 programming, do you see that line?

6 A (Perusing document) Yes.

7 Q That's the television station, isn't it, Mr.  
8 Kennedy?

9 A Yes, that's Channel 32, WCLF.

10 Q KFCB out in California, it doesn't carry 46 hours  
11 of your program?

12 A I am talking about WCLF.

13 Q I understand.

14 A WCLF carries 46 and a half hours.

15 Q So this isn't a measure of the amount of  
16 programming that you make available for each of the stations  
17 that carry you as a distant signal?

18 A The local television programs that we are claiming  
19 as copyright programs, total, 46 and a half hours, and they  
20 were available to every one of those stations.

21 Q But nobody shows it, other than WCLF, for 46 and a  
22 half hours, isn't that right?

23 A They don't all carry all of our programming.

24 Q Do any, other than WCLF, carry it for 46 and a  
25 half hours?

1 A Let me see --

2 Q Exhibit No. 6, WJLC that's not 46 and a half  
3 hours?

4 A No.

5 Q WHMB, 24 percent, that's not 46 and a half hours?

6 A No.

7 Q Well, just to clarify these numbers, 77 million  
8 single adults, that's just a population figure at the bottom  
9 of page 10. That has nothing to do with who watches your  
10 program?

11 A That is just a population figure, that's our  
12 potential -- that's the audience that we would like to  
13 reach.

14 Q It's 60 million on Action Sixties, that's the same  
15 kind of number?

16 A That's correct, that's just what demographers  
17 estimate the American population would be there.

18 Q On page 11.

19 A (Perusing document)

20 Q Do you see in the middle of the page, "The  
21 nationwide toll-free 24-hour Prayer Line?"

22 A Yes.

23 Q You are not the only one who has that, are you?

24 A I don't know.

25 Q You don't know whether other religious programs

1 have that?

2 A I have seen prayer lines, but I have not seen  
3 toll-free prayer lines, 24-hours a day. I know TBN has a  
4 prayer line, but it is not toll-free. I don't know if CBN  
5 has a toll-free prayer line, or not.

6 Q Do you know if CBN has local counselling centers  
7 throughout the country?

8 A I'm sorry?

9 Q Do you know if CBN has local counselling services  
10 throughout the country?

11 A I don't know if they do or not, no.

12 Q At the bottom of page 11.

13 A Okay.

14 Q You talk about TCI and United Cable dropping PTL?

15 A That's correct.

16 Q Isn't that the satellite network, Mr. Kennedy?

17 A The satellite network?

18 Q PTL satellite network?

19 A I don't know.

20 Q You don't know -- do you know whether TCI went out  
21 blacking out the PTL Club on any distant signals in 1987?

22 A No, I don't know that.

23 Q Were they legally allowed to?

24 A I don't know.

25 Q So you just don't know what this statement refers

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1 to?

2 A That's referring to a previous exhibit that I had,  
3 which was a newspaper article.

4 Q You don't know whether that newspaper article was  
5 about the satellite network or about distant signals or --

6 A It did not indicate satellite network.

7 Q So your answer to the question is you don't know?

8 A That's correct. I do know one thing, the local  
9 TCT systems in our area called us and told us they were  
10 dropping the PTL Club and they asked us if they could use  
11 our station to refer calls to, and we said yes.

12 Q You don't know whether they were talking about the  
13 PTL network, or the Club as a distant signal?

14 A They were blocking the PTL Club show, the Jim and  
15 Tammy Show.

16 Q Is it your testimony to this Tribunal that there  
17 was a television station in Florida that blacked out the PTL  
18 Club on a distant signal in 1987, dropped off a distant  
19 signal that they were carrying?

20 A A television station?

21 Q Correct.

22 A Or are you saying a cable system?

23 Q A cable system blacked out the PTL Club on a  
24 television station in Florida --

25 A They replaced it with other programming.

1 MR. GOTTFRIED: Could I ask that the witness  
2 provide the information about that activity, which seems to  
3 be an illegal activity?

4 THE WITNESS: Illegal activity? It was Jones--  
5 some kind of cable in Tampa, Florida.

6 BY MR. GOTTFRIED:

7 Q That was on distant signal?

8 A No, Jones was not a distant signal.

9 Q He blacked it out on a distant signal?

10 A He dropped PTL by putting other programming on,  
11 but not a distant signal.

12 Q Not on a distant signal?

13 A No, the cable is local.

14 Q It has nothing to do with the Tribunal's  
15 consideration?

16 A No.

17 Q You don't know of anybody who blacked it out on a  
18 distant signal?

19 A I am not personally familiar with it, no.

20 CHAIRMAN AGUERO: Are you planning to go after  
21 this cable system --

22 MR. GOTTFRIED: No.

23 CHAIRMAN AGUERO: We are not interested in that.

24 MR. GOTTFRIED: It turns out it was on a local  
25 signal. It was not a distant signal. I have no desire to

1 go after anybody. I don't represent the PTL Club.

2 CHAIRMAN AGUERO: Then I reserve my comments.

3 BY MR. GOTTFRIED:

4 Q At the top of page 12 you talk about no commercial  
5 advertising?

6 A That's correct.

7 Q And none of the religious programs have commercial  
8 advertising, isn't that right?

9 A That's correct.

10 Q And then there is this claim about increased  
11 subscribers -- well, let's talk about relative data in  
12 general for a minute, and percentages. I don't want to  
13 focus on this number. The relevance of relative value would  
14 be if we had some base line figure for what CTC got in 1986,  
15 wouldn't it?

16 Well, let me step back for a minute -- strike that  
17 question for a second.

18 Let's take a hypothetical case, all right, where  
19 in 1986 we had a small claimants and a bunch of large  
20 claimants, the small claimants were awarded \$100.00 by this  
21 Tribunal -- this is just a hypothetical. And then in 1987,  
22 they could show they had a 33 percent increase. And there  
23 was no data about the big claimants, that would put them at  
24 \$133.00, isn't that the way?

25 A Yes.

1 Q How, if they had \$10,000.00 that would put them at  
2 \$13,000.00; and if they had a million, it would be up to 1.3  
3 million. But without knowing where anybody was in '86, the  
4 relative figures don't help you much, do they, Mr. Kennedy,  
5 and don't help the Tribunal very much?

6 A If you are talking about dollars, no.

7 Q How about the percentages, the 33 percent increase  
8 on 50 bucks, the \$83 -- it only take \$33.00, isn't that  
9 right?

10 A You are talking about dollars. I am talking about  
11 --

12 Q I am telling you if you want to go up 33 percent--  
13 -- well, subscribers, how about subscribers, 50 subscribers,  
14 33 percent increase, what do you have to get, 67?

15 A Somewhere in there.

16 Q And then you could say that's a 33 percent  
17 increase. If you add 17 subscribers to a million  
18 subscribers, it doesn't look very impressive, as a  
19 percentage, does it?

20 A That's correct.

21 Q Well, let's talk about marketplace value now.

22 A Okay.

23 Q Are you aware that the Tribunal has stated in  
24 previous cases that viewing figures are the measure of the  
25 marketplace value of the program?



1 A No, I am not.

2 Q You don't know that? You haven't given the  
3 Tribunal one viewing figure in this case, isn't that right,  
4 Mr. Kennedy?

5 A No, I haven't.

6 Q And as far as the evidence in your case shows, it  
7 may be that not one person in the United States is watching  
8 your programs on a distant signal anywhere?

9 A I wouldn't say that.

10 Q As far as the evidence that you have presented,  
11 you have not presented any evidence that one person is  
12 viewing your programs on a distant signal anywhere?

13 A I would say that the testimony of Dr. MacAllister  
14 yesterday provides evidence of over 2,000 letters a month  
15 for that particular program alone is evidence.

16 Q Do you have any evidence about which of those came  
17 from people watching the program as a distant signal  
18 anywhere?

19 A We have evidence of the computer sheet that lists  
20 the city where they were from.

21 Q Have you given the Tribunal that evidence?

22 A Mr. MacAllister put that in his briefcase  
23 yesterday and took it back with him, he did not leave it  
24 with me.

25 Q Have you given the Tribunal that evidence?

1 A No, I haven't.

2 Q Let me ask you the question again. Have you given  
3 this Tribunal any evidence that one person has watched this  
4 program on a distant signal in 1987?

5 A That was going to be included as a special exhibit  
6 in this session today.

7 Q But it hasn't been?

8 A But it is not here. I can provide it though.

9 Q Now, let's get to the measure -- think about what  
10 you are offering --

11 CHAIRMAN AGUERO: Are you going to provide us with  
12 that?

13 THE WITNESS: With the computer sheet that lists  
14 the 2,363 people in August of 1987, that wrote the letters  
15 to Joy Junction.

16 MR. GOTTFRIED: I would have the same objection to  
17 that evidence, unless we -- that would take weeks to go  
18 through and really verify that any of those 2,363 people  
19 watched it on a distant signal, didn't have it available on  
20 a local signal in the same market. We would have to go and  
21 call them, unless in the letter it says on which station  
22 they saw it on.

23 In some cases you are going to duplications, they  
24 may have had it available on another media, in some cases by  
25 satellite network may have made it available.

1 CHATMAN AGUERO: When the time comes we will make  
2 a decision whether to accept it, or not.

3 Continue, please.

4 BY MR. GOTTFRIED:

5 Q Now, you have offered what we would call a time  
6 based fee generation model, is that correct?

7 A I'm sorry?

8 Q You have offered a model based on the time that  
9 you are on a --

10 A A particular program --

11 Q A marketplace value. Is that the linchpin of your  
12 case on marketplace value, the Larson -- well, maybe I  
13 misunderstand. Is Exhibit No. 6 the linchpin of your market  
14 case?

15 A Not necessarily, of the five criteria, it is  
16 probably be more important than that.

17 Q I am talking about criteria three, marketplace  
18 value.

19 A Right.

20 COMMISSIONER ARGETSINGER: Excuse me, Mr.  
21 Gottfried, this Exhibit 6 is the one you are talking about,  
22 I am interested in this. And I see what your methodology  
23 is, and I assume you are suggesting that fee generation  
24 would be one way the Tribunal could look at how the awards  
25 are --

1 THE WITNESS: Yes, it merely shows the  
2 relationship in CTC programs percentages to the non-fee  
3 generated.

4 COMMISSSTONER ARGETSINGER: I suppose if we adopted  
5 a fee generation like this, it would apply to all parties.  
6 We would have to be even-handed about it. And if we did  
7 want to use this, we would of course have to elicit  
8 information as to what other parties -- what their fee  
9 generation was.

10 I don't have any actual figures, but I do know  
11 from other years that there have been attempts to promote  
12 the fee generation and just roughly speaking, as I recall in  
13 past years the total devotional was many times more than the  
14 actual award. And I think the award for this year was  
15 something like \$1.4 million.

16 And had we just, for the sake of argument,  
17 hypothetically taken the fee generation, it might have been  
18 \$12 million.

19 So, we couldn't just simply apply your raw, well,  
20 we could, but would it be fair to apply your raw fee  
21 generation, if we didn't apply that to everyone? And not  
22 shrink it to the actual universe of what was actually  
23 awarded, which is about \$1.4 million?

24 THE WITNESS: I can understand that.

25 COMMISSIONER ARGETSINGER: You can understand

1 that?

2 THE WITNESS: Yes.

3 BY MR. GOTTFRIED:

4 Q Mr. Kennedy, during discovery was there a special  
5 Nielsen report made available -- to follow up on  
6 Commissioner Argetsinger's question --

7 A Yes.

8 Q Do you recall the percentage of time that the  
9 devotional programs in total had?

10 A I think it was 4.6, something like that.

11 Q About 4.6 times the amount that you were given in  
12 Phase I, is that correct?

13 A I am not familiar -- I think that's correct.

14 COMMISSIONER ARGETSINGER: Mr. Gottfried, this is  
15 4.6 -- if it were fee generation it would be 4.6?

16 MR. GOTTFRIED: Well, no, I can't say that, Your  
17 Honor, because that would take a massive study. All I know  
18 is the total time is 4.6 percent. And you get roughly one  
19 percent of the money.

20 COMMISSIONER ARGETSINGER: Yes, all right.

21 MR. GOTTFRIED: Whether the 4.6 would really turn  
22 out -- if you factored in that TBS has a lot of royalties--  
23 I just don't know.

24 COMMISSIONER ARGETSINGER: All right, I see where  
25 you got 4.6.

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1 MR. HARRINGTON: Commissioner Argetsinger, as  
2 indicated yesterday in Mr. Clark's testimony, it is our  
3 attempt to provide the Tribunal with information equivalent  
4 to using the same methodology as used by CTC. And I think  
5 you will see that number at a later time.

6 COMMISSIONER ARGETSINGER: In rebuttal?

7 MR. HARRINGTON: Yes, sir.

8 BY MR. GOTTFRIED:

9 Q Am I wrong to think that Exhibit 6 is the linchpin  
10 of the claim about marketplace value?

11 A That -- not necessarily, that was not my  
12 intention, it was just one methodology that I used.

13 Q What do you use to show there is marketplace  
14 value? You don't use viewing, is that right?

15 A No. I used the increase of distant systems,  
16 increasing distant system subscribers.

17 Q Okay. Well, let's talk about that, let's now get  
18 to what we introduced yesterday, or what we showed the  
19 Tribunal yesterday. Cross-Examination Exhibit No. 1 -- 1-  
20 X, I'm sorry.

21 You heard in Mr. Larson's testimony briefly what  
22 we did to generate this exhibit, and I think overnight you  
23 did something similar yourself, is that right?

24 A Yes.

25 Q Now, is it accurate that in '86-1 -- I think the

1 percentages you used that you gave the Tribunal weren't net  
2 figures, isn't that right? You didn't tell them about the  
3 stations that you were on in 1986, that carried your  
4 programs and were carried as distant signals, but weren't  
5 carried as distant signals in 1987?

6 A No, in my recomputation I used 1986-2, which would  
7 be more accurate data.

8 Q Well, do you want to use 1987 anytime, but only  
9 1986-2, is that what you want the Commission to do?

10 A To me, 1986-2 is an updated 1986-1. Whereas,  
11 1987-2 was not all in at that time, 1987-1 -- I used the  
12 larger number.

13 Q Well, let's look at KTBW in 1986, in the Larson  
14 report.

15 A (Perusing document) Okay.

16 Q I just want to look at the summary sheet that's on  
17 page 33. It shows one system in the first half of 1986  
18 distant, and not in the second half of 1986, is that right?

19 A That's correct.

20 Q You don't want to count that one in 1986?

21 A No, because the 1986-2 was an update and was  
22 probably more accurate.

23 Q So, you've made a determination yourself, about  
24 which of is the more accurate part of Larson?

25 A Based on Tom Larson's discussion with me.

1 Q Did you put that in the testimony anywhere?

2 A No, I didn't.

3 Q If you just take the Larson Report as written,  
4 isn't it true there were 34 systems that carried it in 1986-  
5 1?

6 A 1986-1? I'm not sure. I'd have to go through and  
7 look.

8 Q Well, there were 33 in 1986-2, is that right?

9 A Okay, I see them, yes.

10 Q And we have WTRY -- well, the one I just pointed  
11 out to you, KTBW, is shown as carrying in 86-1, that's just  
12 one more, and that would make 34, isn't that right?

13 A That's correct.

14 Q Now, in 87-1, you show 38.

15 A Yes. Are you talking about before WOAY?

16 Q And now you want to take out 2 for WOAY?

17 A Yes, subtract that.

18 Q That would be 36, and if we subtracted another one  
19 for Cammerillo, would that make it 35?

20 A I wasn't sure about --

21 Q Well, just if we did.

22 A If we did.

23 Q And that would mean that in 86-1 it was on 34  
24 systems, and in 87-1 it was on 35 systems?

25 A Depending on how you calculate 1987.



1 Q You said in 86-1 it was on 34 systems, and in 87-1  
2 it was on 36, or if Cammerillo comes out it is 35?

3 A That's correct.

4 Q And that's the basis of your marketplace analysis?

5 A The basis? Ho. I told you that I'm taking from  
6 1987, I take the highest figure.

7 Q And if it goes up, you think that that shows that  
8 the program had value?

9 A Sure.

10 Q And that's because that shows that a cable system  
11 was willing to pay to carry stations that had your  
12 programming, is that the idea?

13 A Yes.

14 Q Well, let's talk about that for a second.

15 A Okay.

16 Q WCLF, that's a carried distant signal?

17 A That's correct.

18 Q And isn't it true that as a signal -- there are  
19 some systems that carry distant as a signal -- as a station  
20 all together, isn't that right?

21 A I'm not sure I know what you mean.

22 Q Is WCLF carried as a distant signal anywhere, or  
23 was it in 1987?

24 A Yes.

25 Q And isn't it true that one of the systems that

1 carried it made you pay the royalties?

2 A That's correct -- not in 1987, no.

3 Q When was that?

4 A 1984 and 1985 and I think part of 1986. I have  
5 the receipts with me.

6 Q They stopped in 1987?

7 A They changed from Group W to Paragon. We never  
8 received a bill from them for over a year. We didn't pay  
9 anything from like the middle of 1986 to all the way through  
10 1987, at all, and they dropped us March 31, 1988.

11 Q And was that the system in Lakeland, Florida?

12 A That's correct.

13 Q And you want the Tribunal to count carriage by  
14 that system of UCLF, as showing a willingness to pay for  
15 your system?

16 A They did pay for us.

17 Q But they forgot to send you a bill in '87, is that  
18 it?

19 A No, they sent us a bill, we just didn't pay.

20 Q Let's assume that the Tribunal decided it didn't  
21 want to count -- they sent you a bill but you didn't pay it?

22 A That's correct. They changed from Group W to  
23 Paragon. Our agreement was with Group W, not Paragon.

24 Q And their willingness to pay is shown by the fact  
25 that even though they sent you a bill, they didn't -- they

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1 only they did when you didn't pay was drop you?

2 A In 1988. They carried us in 1987 and paid  
3 royalties to do that.

4 MR. GOTTFRIED: Let me mark Cross-Examination  
5 Exhibit 2-X.

6 (Whereupon, the document was  
7 marked for identification as  
8 Exhibit No. SDC 2-X)

9 BY MR. GOTTFRIED:

10 Q Let's just hypothetically assume that the Tribunal  
11 decided -- you're going to have to look at Exhibit Number 6  
12 because there was something different about that Lakeland  
13 system.

14 The fees generated by WCLF as it's reported in  
15 Exhibit Number 6, is \$33,483, is that correct?

16 A That's correct.

17 Q Now, let me just talk about that for a second.  
18 That's based solely on the Larson Report, is that right?

19 A That's correct.

20 Q And that's based on the division among distant  
21 signals that Mr. Harrington talked to Mr. Larson about  
22 yesterday --

23 A That's Form 3 systems only.

24 Q -- that each signal is given equivalent weight--  
25 whatever Mr. Larson does is what you used?

1           A     Whatever it said in here was a fee generated,  
2     that's what I put down.

3           Q     All right. Now, of that, if you look at Exhibit  
4     Number 14 on page 33, I calculate that \$31,191 was generated  
5     by that Lakeland, Florida cable system.

6           A     Where do you see that at?

7           Q     If you look at the total generated number -- I  
8     can give you a calculator -- and look at the H and I, which  
9     would be '87, that's \$14,735 plus \$16,456, that adds up to  
10    \$31,191. I can give you a calculator, or you can take my  
11    word for it.

12          A     Okay. What about the --

13          Q     We're taking Syndex out. You didn't count that in  
14    your totals, right?

15          A     No, there were two distant signals, two Form 3s.

16          Q     No, no, I'm just looking at Lakeland now. I know  
17    there were two Form 3s. Nobody asked you to pay from --

18          A     That's on page 32. You're referring to --

19          Q     Yes -- East Tasco County.

20          A     You're referring to my Exhibit Number 6, is that  
21    correct?

22          Q     I'm talking about the --

23          A     Projecting that to \$33,000?

24          Q     Right.

25          A     Okay. What I'm saying is, I added the Form 3

1 systems. These are all Form 3 systems.

2 Q I understand that. But I'm just focusing on  
3 Lakeland now, the 31.

4 A Okay.

5 Q Nobody from East Tasco County asked you to pay  
6 them back their royalties, did they?

7 A No.

8 Q But 93.5 percent of the royalties was generated by  
9 that Lakeland system, if you divide \$31,191 by \$33,483 -- is  
10 that right?

11 A I'll take your word for it.

12 Q And then going back to Exhibit 6, you can see  
13 what's happening in 4 and 5. If you take 93.5 percent, 15  
14 percent of the time, just to get an idea of what Lakeland is  
15 doing here, you get that \$8,732.81 of the \$9,375 generated  
16 by that Lakeland system, do you understand how that's done?

17 A Uh-huh.

18 Q And it's just 93.15 percent of it. You have no  
19 reason to doubt these computations, do you?

20 A No.

21 Q Now, if you take the 8732 as a percentage of the  
22 total fee generation that you're claiming on Exhibit 6, will  
23 you take my word for it that it's over half, it's 53.17  
24 percent of the total royalties that you claim on that page?

25 A I'm not sure I understand how you're doing that.

1 Q Well, you just take 8,732.81 and divide it by  
2 16,424.

3 COMMISSIONER ARGETSINGER: Mr. Gottfried, what  
4 page are we on now?

5 MR. GOTTFRIED: Well, just on my exhibit --THE  
6 WITNESS: Oh, I didn't know you were using this. I thought  
7 you were using my Exhibit 6.

8 BY MR. GOTTFRIED:

9 Q The 8732.81 is just the 93.15 percent of the  
10 royalties generated by CTC on Exhibit 6. You have to look  
11 back and forth.

12 COMMISSIONER ARGETSINGER: Yes.

13 BY MR. GOTTFRIED:

14 Q Now what I'm looking for is a percentage of the  
15 total, total from all systems that were generated by the  
16 Lakeland carriage of WCLF, and that comes to be -- over  
17 half. Do you understand what I'm saying, Mr. Kennedy?

18 A I'm sorry.

19 Q Okay. You had \$16,424 in total revenues  
20 generated, according to the methodology that you used on  
21 Exhibit Number 6.

22 A Oh, I see. Okay.

23 Q Of that, \$8,732.81 was generated by carriage by  
24 the Lakeland system, of WCLF.

25 A Okay.

1 Q And if you take that as a percentage of the total,  
2 total generated by all stations carried as distant signals,  
3 it's over half -- 53.17 percent, in fact.

4 A Okay. So, you take the 8732, divide it by 16,424?

5 Q Correct.

6 A That's correct.

7 Q And if you subtract it now, the 8732.81 from the  
8 16 figure, you'd have total fee generation attributable to  
9 carriage other than Lakeland carriage on WCLF, of \$7,691.19,  
10 is that correct?

11 A I think so. That's correct.

12 Q Now, you also have some information in this case  
13 about carriage by prime time, is that correct, Mr. Kennedy?

14 A Yes.

15 Q And if you call prime time, 6:00 to 12:00 --

16 A Six to 11:00.

17 Q Six to 11:00. Where did you get that from?

18 A In sales and in 23 years of broadcasting, that's  
19 normally been --

20 Q So, the standard in the industry, as far as you're  
21 concerned, is 6:00 to 11:00?

22 A As far as I'm concerned.

23 Q Well, let's assume that's right for a second. And  
24 if the FCC regulations define prime time differently, would  
25 you accept the FCC regulations as controlling?

1 A Sure.

2 Q I just want to look now back to Exhibit Number--  
3 could you just direct me to the exhibit where you talk about  
4 prime time?

5 A Exhibit 11.

6 Q That's Exhibit 11, is that right?

7 A That's correct.

8 (Whereupon, the document was  
9 marked for identification as  
10 Exhibit No. SDC 3-X)

11 Q And I want to focus just on the local stations  
12 because the Tribunal isn't in the business of compensating  
13 anybody for carriage on local signals, is that right?

14 A That's correct.

15 Q And the last two columns are the ones that refer  
16 to distant carriage?

17 A Uh-huh.

18 Q And what I've done in this exhibit -- and you're  
19 free to verify it, Mr. Kennedy -- is to try -- WCLF is your  
20 own station, isn't that right? It's owned and operated by  
21 CTC?

22 A That's correct.

23 Q I'm trying to get a sense of what other carriage  
24 there is, or how much of the carriage on prime time is  
25 attributable to carriage on WCLF. So, what I've gone



1 through here is -- and your new Exhibit 12 makes it easier  
2 than when I did it -- I calculate that 15 of 17 incidents  
3 were on WCLF. You have 18. I just couldn't find three  
4 carriages of the Downings; maybe I missed one.

5 The only carriage I see of the Downings -- maybe  
6 we should get that clear first -- CTC Amended Exhibit Number  
7 12 -- I see one carriage from 7:00 to 7:30 p.m. on CLF, and  
8 one carriage from 7:30 to 8:00 on Saturday in Springfield,  
9 Ohio. Is there another one?

10 A Just a second. (Perusing document) In prime  
11 time? Okay. You're right.

12 Q So, the number 3 should be switched to 2.

13 A That's correct.

14 Q And the number of distant systems would be 2. So,  
15 it should be 17 times on 16 distant systems.

16 A That's correct.

17 Q Okay. Now, what I've done on this exhibit is, of  
18 the 17 incidents of carriage, is it correct to say that 15  
19 are on WCLF?

20 A Excuse me -- you said on 16 distant systems?

21 Q Correct. I just subtracted one from each. It's  
22 two carriages of the Downings on two distant systems.

23 A Oh, okay. I see what you mean.

24 Q Well, I don't know -- you're right. I'd have to  
25 check.

1           A     It was carried in prime time on one, two distant  
2 systems, you're correct.

3           Q     And what I tried to do -- is it a fact that 15 of  
4 the 17 incidents are on your own station, WCLF?

5           A     I would have to check. I would think that might  
6 be correct, though.

7           Q     Can you check fast?

8           A     I'll try. We're having to go through each one of  
9 these individual programs.

10          Q     But it's not hard anymore, with the streamlined  
11 Exhibit Number 12.

12               CHAIRMAN AGUERO: Let's take a break now, for ten  
13 minutes.

14               (Whereupon, a short recess was taken.)

15               CHAIRMAN AGUERO: On the record. Before we  
16 continue, we are planning to adjourn this morning around  
17 12:30, and we shall return in one hour or one hour and a  
18 half --

19               MR. GOTTFRIED: I'm going to try to finish, Mr.  
20 Commissioner.

21               CHAIRMAN AGUERO: This morning?

22               MR. GOTTFRIED: I'm going to try.

23               CHAIRMAN AGUERO: Very good. Excellent. Thank  
24 you very much.

25               THE WITNESS: There really is a God.

1 BY MR. GOTTFRIED:

2 Q Have you had a chance to review that exhibit?

3 A Yes, I have.

4 Q Is that accurate? Is that exhibit accurate?

5 A Yes, it is.

6 Q Now, sticking to this issue of prime time  
7 carriage, I want to show you what we'll mark as Exhibit 4-X.

8 (Whereupon, the document was  
9 marked for identification as  
10 Exhibit No. SDC 4-X)

11 And what I've done here, Mr. Kennedy -- you can  
12 verify this information from Exhibit Number 12 --is I've  
13 taken the two largest stations other than WCLF that you  
14 carry it on. There's KFCB that you say on Exhibit 6  
15 generated \$2,001 and WCFC \$2,266. The next largest station,  
16 as it says, is down to \$883, on Exhibit 6.

17 We have listed all the carriage of your programs  
18 on those two stations and, unless I'm mistaken, there's no  
19 prime time carriage on either one of those stations, isn't  
20 that right?

21 A Which stations are you referring to?

22 Q I'm sorry -- there's one, Solo Act, 6:30 to 7:00.

23 A Right.

24 Q And the rest of it is not prime time?

25 A That is correct.

1 CHAIRMAN AGUERO: Mr. Kennedy, when you say it is  
2 correct, do you agree with Mr. Gottfried on the issue of the  
3 prime time?

4 MR. GOTTFRIED: I'm taking his definition,  
5 Commissioner, I'm using 6:00 to 11:00.

6 CHAIRMAN AGUERO: Six to 11:00?

7 MR. GOTTFRIED: That's right.

8 CHAIRMAN AGUERO: And the FCC has the prime time  
9 from what time to what time?

10 MR. GOTTFRIED: In the Central Zone --

11 MR. HARRINGTON: It depends on which time zone  
12 you're in, Mr. Chairman.

13 MR. GOTTFRIED: Oh, this is Pacific, KFCB.

14 MR. HARRINGTON: That would be 7:00 until 11:00.

15 CHAIRMAN AGUERO: Seven to 11:00, there is a one-  
16 hour difference between you and Mr. Kennedy.

17 MR. GOTTFRIED: Well, we could put into evidence  
18 the FCC regulation.

19 BY MR. GOTTFRIED:

20 Q The prime time carriage -- in fact, the only prime  
21 time carriage of KFCB is 6:30 to 7:00, is that right, under  
22 your definition of prime time?

23 A Yes.

24 Q So, if prime time does begin at 7:00,  
25 hypothetically, then there would be no prime time carriage

1 on either one of those signals?

2 A That is correct.

3 Q Let's turn away from the issue of how much  
4 carriage there is on prime time. By the way, on Exhibit  
5 Number 3-X, did you confirm the percentage that, in fact,  
6 88.2 percent of the carriage in prime time on distant  
7 signals -- signals carried as distant -- attributable to  
8 WCLF 15 out of 17?

9 A I'm not seeing where you --

10 Q On the bottom of Exhibit 3-X, in the middle of the  
11 page, almost 90 percent.

12 A No, I did not confirm that, but I'll take your  
13 word for it.

14 Q All right. Going back to the case -- in the  
15 middle of page 14, Mr. Kennedy, you talk about the amount of  
16 time, and there's a number, 5.65 and 4.4 that floats around,  
17 is that right? You've got 5.65 percent of all the fees  
18 generated?

19 A Oh, okay. Yes.

20 Q And that it's 4.4 percent of the time?

21 A Right.

22 Q And, again, that includes the time on your own  
23 station, WCLF, is that right?

24 A Uh-huh.

25 Q I want to show you what we'll mark as cross-

1 examination Exhibit 5-X, and all I've done on that exhibit  
2 is taken WCLF out of Exhibit Number 6, just to see what  
3 effect that has on those figures.

4 (Whereupon, the document was  
5 marked for identification as  
6 Exhibit No. SDC 5-X)

7 There is a difference from what we did before when  
8 we talked about the Lakeland carriage. This is now all  
9 carriage of WCLF. I just took that number right out.

10 A Uh-huh.

11 Q And that left, in my calculation, \$7,049 in  
12 generated fees.

13 A That's right.

14 Q And I did the recalculation, I added up the time  
15 columns, and I get it dropping from 4.5 percent to 2.224  
16 percent.

17 A Okay.

18 Q Is that right?

19 A That's correct.

20 Q And the fees attributable now switch to \$7,049  
21 over a total pot of \$257,052, and that comes to 2.7 percent  
22 instead of 5.65 percent, is that right?

23 A I'll take your word on it.

24 Q These numbers are percentages. That has nothing  
25 to do -- just to follow up on what Commissioner Argetsinger

1 is talking about -- that has nothing to do with the relation  
2 to any other claimants, isn't that right?

3 A I don't know that to be true, no.

4 Q I mean, you haven't compared yourself to anybody  
5 else?

6 A No, this is just strictly --

7 Q And this number doesn't allow the Tribunal to do  
8 that. It would have to see what everyone else got in order  
9 to use this number as a comparative figures, is that  
10 correct?

11 A I understand what you mean. That's correct.

12 Q I want to go back to these increases again, just  
13 quickly. These relative numbers that we talked about  
14 earlier, between '86 and '87. This is not to belabor the  
15 point, but it only helps, doesn't it, if you know what went  
16 on -- what you were entitled to in '86.

17 Let me just give you an exhibit. I tried to go  
18 through in the same way as we did on the systems, just  
19 taking the Larson Report at face value, I put down the  
20 number -- this is 6-X.

21 (Whereupon, the document was  
22 marked for identification as  
23 Exhibit No. SDC 6-X)

24 And we can go through and confirm this, but I do  
25 show -- this time I do show an increase between '86 and '87,

1 just not the same percentage that you talked about anywhere.

2 This has been checked and rechecked by paralegals  
3 and what it shows on the face of it is 322,000 in 86-1 and  
4 432 in 87-2, and that looks to me like a 34 percent  
5 increase.

6 I guess it's your position that you want the  
7 Tribunal to disregard 87-2 numbers on the ground that they  
8 are not reliable, is that right?

9 A No, I'm saying that I took, in 1987, the largest  
10 number, the larger number --

11 Q All right.

12 A -- in 1986-2 and not 1986-1.

13 Q All right. Well, then, if we took the 87-1, it  
14 would be up to 439, that's not 90 percent. Well, I guess I  
15 don't know what number you're using at this point, the  
16 increase in number of subscribers. This isn't 91.2 percent,  
17 at least the way I calculate it, is it?

18 A Okay. Now, that particular number is one that I  
19 erased, and I don't know where I got that figure. I do have  
20 the Form 3 figure of 92 percent, but --

21 Q But that one hasn't been verified for us, has it?

22 A That's true.

23 Q It's not in evidence. Maybe you could go through  
24 Exhibit 6-S -- I don't want to hold the Tribunal up.

25 I would suggest that if Mr. Kennedy finds any



1 inaccuracy, that he send a letter in -- this is just from  
2 the face of the Larson Report, the numbers that are reported  
3 in the summary columns, all of which are admitted in the  
4 record.

5 CHAIRMAN AGUERO: Mr. Kennedy?

6 THE WITNESS: What I'd like to do is take this,  
7 and if I do find any inaccuracies, I'll let you know. Is  
8 that all right?

9 COMMISSIONER ARGETSINGER: Mr. Kennedy, on your  
10 amended page 12 where you do refer to 91.2, does that refer  
11 to an exhibit, where you say "we especially found for all  
12 the reasons beneficial to cable operators in 1987, we  
13 increased our distant subscribers by 91.2"?

14 THE WITNESS: That -- no, that does not refer to  
15 any exhibit.

16 COMMISSIONER ARGETSINGER: Can you tell us how you  
17 arrived at that figure?

18 THE WITNESS: Okay. Like I say, I've erased my  
19 calculations and recalculated for Form 3 systems only. What  
20 I did, I took 1986-2 Form 3 subscribers and came up with a  
21 total. In 1987, I took the highest number of subscribers on  
22 each one of those distant Form 3 systems, totalled all those  
23 up.

24 COMMISSIONER ARGETSINGER: Did you take those from  
25 the Larson Report?

1 THE WITNESS: Yes, I did.

2 MR. GOTTFRIED: This doesn't say Form 3, it just  
3 says --

4 THE WITNESS: No, that's what I was explaining. I  
5 would have to go back and refigure how I did that. I don't  
6 recall because I erased it.

7 COMMISSIONER ARGETSINGER: Did you take it -- were  
8 they all Form 1 or Form 2 or Form 3?

9 THE WITNESS: When they were just simply distant  
10 subscribers, I took a total of all distant subscribers.

11 COMMISSIONER ARGETSINGER: Were these first half  
12 of the year, or --

13 THE WITNESS: Again, in 1987, we took the highest  
14 number.

15 COMMISSIONER ARGETSINGER: Consistently.

16 MR. CASSLER: Sometimes it was the first half and  
17 sometimes it was the second half?

18 THE WITNESS: Sometimes it was one or the other.

19 BY MR. GOTTFRIED:

20 Q Just to get this clear, when you did that  
21 calculation -- let me look at -- let's see -- WTKK, for  
22 example, top of the second page of Exhibit 6-X. You see  
23 that the Larson Report showed 26,048 in 86-2, zero in '87.

24 When you did your calculation, did you net out  
25 gains by that kind of loss?

1 A Let me look through that.

2 Q Do you understand if you're going to talk about  
3 increases, you want to talk about net increases, isn't that  
4 right, Mr. Kennedy? You can't take gains and not count  
5 losses.

6 A You had a zero -- I don't understand what the  
7 zeroes are for.

8 Q Let's look at WTKK. It's on page 83.

9 A WTKK -- okay, I see it -- that was not counted in  
10 '87.

11 Q You've got zero in '87, but you got 26,021 in '86  
12 --

13 A Uh-huh.

14 Q And you see I put that in my calculation.

15 A Right.

16 Q When you did your '86 calculation, did you include  
17 those WTKK subscribers? The way I read Exhibit Number 14-A,  
18 you didn't. You didn't give the Tribunal a net figure, you  
19 just counted increases and didn't account for decreases.

20 A I don't think I did on that particular one, no.

21 Q But WTKK --

22 A The reason I didn't, wasn't it one of the ones in  
23 Manassas that was dropped, which you said was local although  
24 that was distant?

25 Q No, I didn't say -- you didn't take the Larson

1 Report on its face? Is that what you are now saying, that  
2 you --

3 A I'm saying that in 1987, I didn't; there was no  
4 figure to add to it.

5 Q Correct, but in '86 there was.

6 A Right.

7 Q And when you tried to figure out a change between  
8 '86 and '87, you didn't count the decrease on WTKK.

9 A That's exactly right, but what I was trying to do  
10 last night was to go through and recalculate everything for  
11 Form 3.

12 Q I understand. But in the evidence you presented  
13 to this Tribunal to get that 91 percent on all systems, you  
14 didn't net out losses; you just counted increases.

15 A That's right. That was an oversight.

16 Q And Exhibit 6-X -- just, again, the face of the  
17 Larson Report is an attempt to count what both increases and  
18 decreases, do you understand that?

19 A I understand what you're trying to get at. I do  
20 have a question, though. The totals that you come up with  
21 are low -- for instance, in 87-1 and 87-2, if you  
22 recalculate the highest number, you'll come up with over  
23 500,000.

24 Q I just took the totals as reported for the two  
25 periods.

1           A     Of course. It's to your advantage to do that, and  
2 it was to my advantage to take the highest number.

3           Q     I understand. Did you explain in your case how  
4 you had arrived at the number, to the Tribunal? Did you  
5 explain that you didn't just take the numbers from the face  
6 of the Larson Report?

7           A     No.

8           Q     Let's turn to page 14, the quality of programming.  
9 We've seen your tape and I think your programs are of high  
10 quality. Do you have any -- you've seen CBN's programs, for  
11 example, haven't you, and those programs are of high  
12 quality, aren't they?

13          A     Yes.

14          Q     And they've won awards also, isn't that right?

15          A     Yes.

16          Q     And the Old Time Gospel Hour is a high quality  
17 program.

18          A     Are you talking about technically?

19          Q     Yes.

20          A     As far as I know. I assume it is.

21          Q     Now, we've gone through the time considerations, I  
22 think, in the -- in talking about marketplace value, isn't  
23 that right? We've gone through the 46 and a half figure and  
24 we've established that that's just on your own station,  
25 UCLF, not on any other stations carried as distant?

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1 A Right.

2 Q And we've talked about the prime time carriage and  
3 how that's divided up?

4 A Uh-huh.

5 Q And we've talked about the time figure and how  
6 WCLF affects that?

7 A Right.

8 Q And we've talked about the free of charge and the  
9 payment -- or bill from the Lakeland Cable System, isn't  
10 that right?

11 A Right.

12 Q And these figures on the increases, again, none of  
13 those are net figures are they? They don't count decreases,  
14 they only count increases.

15 A Are you talking about inclusion?

16 Q Yes.

17 A There were increase.

18 Q You didn't count the systems -- the stations  
19 weren't carried in '87 but were carried in '86, like WTKK,  
20 not in the calculations you had done earlier? I know you  
21 tried to correct it.

22 A There was one oversight out of that whole thing,  
23 and when I offered for exhibits is strictly Form 3 systems.

24 Q At the bottom of the page, you talk about the  
25 claim is for 15 percent of the fund, is that right?

1 A Yes, uh-huh.

2 Q The fund is roughly \$1.4, is that right?

3 A That's correct.

4 Q Isn't that more than all the stations that you  
5 appear on generate for all their programs?

6 A I'm sure it is, yes.

7 Q And it's certainly more than the \$16,000 that  
8 appears in the last column of Exhibit 6?

9 A Yes.

10 Q And it's more than appears -- way more if you take  
11 out Lakeland, isn't that right?

12 A Yes.

13 Q And you haven't given the Tribunal any number--  
14 even if it were to adopt fee generation for the first time,  
15 that would allow them to compare your carriage with everyone  
16 else's -- with the other Claimants' carriage?

17 A I assume that they have knowledge of what the  
18 other Claimants have done through their exhibits.

19 MR. GOTTFRIED: I have no further questions.

20 CHAIRMAN AGUERO: Mr. Kennedy, do you have  
21 redirect to offer?

22 THE WITNESS: Yes. I would like to offer the  
23 handwritten form --

24 MR. GOTTFRIED: Oh --

25 CHAIRMAN AGUERO: Yes?

1 MR. GOTTFRIED: I'm sorry. I just wanted to move  
2 into evidence Cross-Examination Exhibits 1 through 6. I  
3 think Mr. Kennedy did not move into evidence his exhibits,  
4 but I have no problem stipulating that those are also in  
5 evidence.

6 CHAIRMAN AGUERO: Commissioner, do you have any  
7 questions?

8 CHAIRMAN AGUERO: Well, I may, but I'd like to  
9 hear his redirect.

10 CHAIRMAN AGUERO: Mr. Kennedy, present your  
11 redirect.

12 MR. GOTTFRIED: So, is the motion granted?

13 CHAIRMAN AGUERO: What was your motion, sir?

14 MR. GOTTFRIED: To move into evidence Cross-  
15 Examination Exhibits 1-X through 6-X.

16 CHAIRMAN AGUERO: Yes.

17 (Whereupon, Exhibits Nos. SDC  
18 1-X through 6-X, inclusively,  
19 were received in evidence)

20 MR. GOTTFRIED: Thank you.

21 CHAIRMAN AGUERO: All right.

22 THE WITNESS: I'd like to offer these as evidence,  
23 too, that would show clear increases in CTC's carriage of  
24 subscribers and also distant systems, distant Form 3  
25 systems.



1 MR. GOTTFRIED: I think we've had a ruling.

2 CHAIRMAN AGUERO: We already ruled on those  
3 exhibits that you are starting to introduce right now.

4 THE WITNESS: Can I use these in rebuttal.

5 CHAIRMAN AGUERO: Well, whatever order we gave  
6 before. You may use it, yes.

7 THE WITNESS: Okay.

8 CHAIRMAN AGUERO: You heard what we said this  
9 morning, yes --

10 THE WITNESS: I don't guess I understood--

11 CHAIRMAN AGUERO: -- the decision?

12 THE WITNESS: -- that you're not going to allow it  
13 today, but you will allow it in rebuttal, is that correct?

14 COMMISSSTONER ARGETSINGER: If there is no  
15 objection and if it fits in the rebuttal case, it may be  
16 something you might consider to put in in rebuttal if it  
17 somehow pertains to the case that was presented.

18 THE WITNESS: Right, because it shows clear  
19 increases.

20 COMMISSSTONER ARGETSINGER: Now, the other parties  
21 may or may not object to it; if they don't, you're fine and  
22 if they do then we would have to consider what their  
23 objection is, and you would have to counter with why it  
24 should be introduced.

25 THE WITNESS: Fine. I have nothing else to say.

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1 CHAIRMAN AGUERO: Mr. Gottfried?

2 MR. GOTTFRIED: No further questions.

3 CHAIRMAN AGUERO: Commissioner?

4 EXAMINATION BY THE TRIBUNAL

5 BY COMMISSIONER ARGETSINGER:

6 Q Well, I think that some of the comments, Mr.  
7 Kennedy, that have come up during your cross -- can you sum  
8 up for us in a way that would be helpful for your case, why  
9 you are different than the other Devotionals on all of the  
10 criteria that you gave?

11 A I think we're different from the other  
12 Devotionals, in the fact that we produce more copyrighted  
13 programming than all the others combined. I think that is  
14 one indication of difference, and the fact that we receive  
15 about 10 percent of our income from direct mail shows harm,  
16 in my opinion, that when we don't know we're on a system or  
17 station in some other state or some other country, that we  
18 lose money by not knowing that until it comes to two years  
19 later --

20 Q Or it could be harm or loss of opportunity, I  
21 think you stated earlier.

22 A Yes. Other than that, I think basically we're all  
23 in the same boat together.

24 Q I know you were asked before about how you got  
25 from the 5.6 percent award to a 15 percent award. Maybe you

1 could shed some more light on that.

2 A Yes. First of all, the 15 percent was broken down  
3 in our minds, that we would receive an award of fees-  
4 generated, for a percentage of that, which would be roughly  
5 equal to 4.5 or 5 percent.

6 Q Four and a half to 5 percent of --

7 CHAIRMAN AGUERO: How much is 4.5 percent of \$1.4  
8 million?

9 THE WITNESS: I'm talking about 4.5 to 5 percent  
10 of the total fees generated, which amounts to \$16,000.  
11 Okay. Then there is the unclaimed portion of the fund that  
12 the Settling Devotional Claimants have been getting a large  
13 percentage of, and certainly if they put down exactly the  
14 amount of programming, the amount of time that that program  
15 is on certain stations, and the amount of fees generated  
16 from that, it would not amount to very much, and that would  
17 be taken into consideration also.

18 BY CHAIRMAN AGUERO:

19 Q Do you have any idea how much money is in the  
20 unclaimed fund?

21 A I have no idea what the unclaimed funds are.

22 Q How do you get from \$16,000 to 15 percent in fees,  
23 from \$16,000 in the fee-generated plus 15 percent?

24 A Give me just a minute.

25 MR. HARRINGTON: Commissioner Argetsinger, I think

1 in your questions -- I'm concerned that there is an apparent  
2 possible misunderstanding of the testimony, and I think it  
3 would be important to clarify that where there's a reference  
4 to 5.65 percent, I believe, I do not believe the testimony  
5 today indicates that that is a reference to 5.6 percent of  
6 the total fees generated by all Devotional Claimants or  
7 anything else. That's 5.6 percent of the fees, the 200-and-  
8 some-odd thousand dollars in fees generated only by CTC.

9 I think our evidence will show that the total  
10 amount of fees generated is in the many millions of dollars,  
11 by all Devotional Claimants here.

12 MR. GOTTFRIED: You take the total fees generated

13 --

14 COMMISSIONER ARGETSINGER: I'm talking about  
15 Exhibit 6.

16 MR. GOTTFRIED: Right -- it's the percentage of  
17 all fees generated by the stations that they happen to be  
18 on, that they generate.

19 COMMISSIONER ARGETSINGER: Do you understand that,  
20 Mr. Kennedy?

21 THE WITNESS: Yes.

22 COMMISSIONER ARGETSINGER: Yes, I think he does.

23 THE WITNESS: The other point that I wanted to  
24 make, with the 15 percent, we're roughly at 5 percent for  
25 the fee generation, roughly 5 percent for unclaimed funds,

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1 and then another 5 percent for each of the five criteria, is  
2 what we're basing our claim on.

3 BY COMMISSIOENER ARGETSINGER:

4 Q But would you not -- with the 5.6 percent, using  
5 that as some basis, does that not also include the unclaimed  
6 funds because all parties share equally in the unclaimed  
7 funds.

8 A The 5.65 percent that I have here was strictly the  
9 \$16,424.

10 Q You were basing that on a fee generation --AI was  
11 basing that on the fees generated by our programming.

12 Q For want of some other criteria, that is a basis  
13 that you advanced.

14 A That's what I came up with that we generated on  
15 distant systems.

16 Q And then you add another 5 percent --

17 A For unclaimed funds.

18 CHAIRMAN AGUERO: And 5 percent for the CRT  
19 criteria?

20 THE WITNESS: Five percent for the CRT criteria.

21 COMMISSIOENER ARGETSINGER: That clears up how you  
22 get to 15 percent.

23 MR. GOTTFERTED: Will I have the opportunity for  
24 follow-up questions based on that?

25 COMMISSIOENER ARGETSINGER: Yes.

## FURTHER CROSS-EXAMINATION

BY MR. GOTTFRIED:

Q Mr. Kennedy, are you aware that in the 1983 cable royalty distribution, the Tribunal stated and I quote, "In Phase II, the Tribunal only attempts to appraise the relative worth of the works represented by the claimants before it. In making such an assessment, we eliminated from consideration the Nielsen data for unclaimed works and arrived at a new starting point", end quote.

A No, I was not aware of that.

COMMISSIONER ARGETSINGER: The starting point would be the 100 percent that's in there.

BY MR. GOTTFRIED:

Q Are you aware that the Tribunal rejected, in the same quotation -- and this is at 51 Federal Register 128717 -- I'll quote again. "Multimedia's argument that MPAA has shown, at most, an entitlement to 94.27 percent of the Phase II fund because it had only shown a 94.27 Nielsen share is not correct", end quote, and then it went on to say that "the task is to establish relative shares of those who appear before", who file claims. Do you understand that that is the Tribunal's ruling in past proceedings?

A What you have just read, I understand it.

Q Now, let's just go back briefly to this 5.65 percent. Let me clarify that it has nothing to do with the

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1 comparison of your programs with anybody else's programs, is  
2 that correct?

3 A That's correct. That's just what we generated.

4 Q If you take the Larson model, giving each signal  
5 the same amount of royalties, whether it's TBS or CLF, you  
6 get a total number for all the stations on which you appear  
7 as distant signals, and that's 290,000, according to Exhibit  
8 6?

9 A Right.

10 Q If you take your percentage of times on those  
11 programs, even though the Tribunal has said that time is a  
12 distorting quantity, you get \$16,424 generated by your  
13 programs in 1987, is that correct?

14 A That is correct.

15 Q And \$16,424 turns out to be 5.65 percent of  
16 \$290,000, isn't that right?

17 A Right.

18 Q That's the only significance of that figure. That  
19 doesn't show any relative worth compared to anyone else's  
20 programs, isn't that right?

21 A I wasn't comparing it with anyone else's programs.

22 Q Do you know what the percentage of all -- as it  
23 relates to the \$1.4, that \$16,000 is?

24 A I have no idea.

25 MR. GOTTFRIED: I have no further questions.

1           COMMISSSTONER ARGETSINGER: Mr. Kennedy, of course,  
2     the \$1.3 million or \$1.4 million that's in the pot includes  
3     the unclaimed fund. So, a 5 percent claim would go for the  
4     entire pot, it's not divided --

5           THE WITNESS: I understand. That, to me, seems  
6     like a contradiction from what the ruling said and what was  
7     actually done because there is -- what did we have last year  
8     or -- 1983, or whenever the last proceeding was, CBN, PTL  
9     and Old Time Gospel Hour, the large three, came up with the  
10    entire fund.

11          COMMISSIONER ARGETSINGER: That's right.

12          THE WITNESS: Did they generate or did they earn  
13    that entire fund, just from their programs? What about all  
14    the other stations?

15          COMMISSSTONER ARGETSINGER: Well, not necessarily  
16    because with many claimants there is an unclaimed portion;  
17    in some categories it's large, in some categories it's  
18    small, however, the entire amount is awarded to those  
19    claimants.

20          You are also a claimant. Any award that you may  
21    receive, of course, you would receive percentagewise that  
22    part -- relative to the others, that relative amount of the  
23    unclaimed fund yourself.

24          THE WITNESS: What about the -- I don't know if  
25    there are hundreds or not, but there certainly are at least



1 62 TV ministries that I know about in the Nielsen ROSP. What  
2 about all those people who have all this money coming to  
3 them -- Jimmy Swaggart, for example --

4 COMMISSIONER ARGETSINGER: Well, you have to make  
5 a claim here.

6 THE WITNESS: I understand that, and that's what  
7 I'm doing, and apparently the top three have been getting  
8 the entire pot of what everyone has put into it, and I'm  
9 simply wanting a 5 percent share.

10 COMMISSIONER ARGETSINGER: Five percent and then  
11 another 5 percent.

12 THE WITNESS: That's correct, and another 5  
13 percent.

14 CHAIRMAN AGUERO: We have an open door to everyone  
15 who wants to make some claim, like Jimmy Swaggart, like Dr.  
16 Schuller, like Mr. Kennedy from Florida, and anyone else who  
17 wants to put in a claim to us. We are here to solve the  
18 problems, you know?

19 THE WITNESS: I'll bring Mr. Swaggart with me next  
20 time.

21 (Laughter.)

22 CHAIRMAN AGUERO: Anything else, Mr. Gottfried?

23 MR. GOTTFRIED: No.

24 CHAIRMAN AGUERO: Commissioner?

25 COMMISSIONER ARGETSINGER: No.

1 CHAIRMAN AGUERO: This concludes the proceeding of  
2 the Phase II direct case, and I hope that we will have the  
3 privilege of meeting with you people again in rebuttal on  
4 December 4th, 5th and 6th. In the meantime, I wish a happy  
5 Thanksgiving to everyone. Thank you.

6 (Whereupon, the witness was excused.)

7 (Whereupon, at 12:25 p.m., the hearing was  
8 adjourned, to reconvene Tuesday, October 31, 1989, at 10:00  
9 a.m., for hearing the direct cases in the Music category.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: CRT - CABLE COPYRIGHT ROYALTY  
DISTRIBUTION PROCEEDINGS - PHASE II

Before: MARIO F. AGUERO, CHAIRMAN

Date: OCTOBER 26, 1989

Place: WASHINGTON, D.C.

represents the full and complete proceedings of the  
aforementioned matter, as reported and reduced to type-  
writing.

*Phyllis Young*  
\_\_\_\_\_  
PHYLLIS YOUNG

DISTANT SYSTEMS

1986

KDTX 0  
KFCB 0  
0  
KITV 0  
KLUJ 0  
KNAT 0  
KNLC 0  
KPAZ 0  
KTBN 2  
2  
KTBO 0  
1  
KTBW 1  
0  
KYFC 3  
3  
WCFC 5  
5  
WCLF 2  
2  
WDLI 1  
1  
WEFC 0  
WEJC 0  
WFHL 0  
WGGN 0  
WHBR 0  
WHFT 3  
3  
WHMB 8  
7  
WHME 0  
0  
WHTN 0  
WKBS 0  
WKOI 1  
1  
WLCN 0  
WLLA 0  
WLXI 0  
WLYJ 0  
1  
WMCF 0  
WOAY 0  
0  
WPCB 5  
5  
WRDG 0  
WSFJ 0  
WSWS 0  
WTBY 1  
0  
WTGL 0  
WTJC 1  
1

1987

KDTX 0  
KFCB 2  
2  
KITU 0  
KLUJ 0  
KNAT 0  
KNLC 0  
KPAZ 0  
KTBN 3  
1 + 1 pt  
KTBO 1  
1  
KTBW 1  
0  
KYFC 3  
0  
WCFC 5  
4  
WCLF 1  
2  
WDLI 0  
0  
WEFC 0  
WEJC 0  
WFHL 0  
WGGN 0  
WHBR 0  
WHFT 3  
2  
WHMB 7  
6  
WHME 1  
1  
WHTN 0  
WKBS 0  
WKOI 1  
1  
WLCN 0  
WLLA 0  
WLXI 0  
WLXJ 0  
1  
WMCF 0  
WOAY 3  
0  
WPCB 6  
3  
WRDG 0  
WSFJ 0  
WSWS 0  
WTBY 0  
0  
WTGL 0  
WTJC 1  
1

SETTLING DEVOTIONAL CLAIMANTS  
Cross-Exam Exhibit No. \_\_\_\_  
Page 2 of 2

1986

WTJR 0  
WTKK 1  
1  
WTLJ 0  
WTSF 0

=====

1986-1	34
1986-2	33

1987

WTJR 0  
WTKK 0  
0  
WTLJ 0  
WTSF 0

=====

1987-1	38
1987-2	25 + 1

\* \* \*

- o 23.5% fewer systems in 1987-2 than 1986-1
- o 26.5% fewer full-time systems in 1987-2 than 1986-1

**ANALYSIS OF FORM 3**  
**FEE GENERATION OF WCLF**

(1) Fees allegedly generated by WCLF (From CTC Exhibit No. 6)	\$33,483.00
(2) Fees generated by Lakeland Florida Cable System (From CTC Exhibit No. 14, p. 33)	\$31,191.00
(3) Percentage of total WCLF fees generated by carriage in Lakeland	93.15%
(4) Fees allegedly generated by CTC Programs on WCLF (From CTC Exhibit No. 6)	\$ 9,375.00
(5) Amount of fees generated by CTC Programs on WCLF that are attributable to carriage in Lakeland	\$ 8,732.81
(6) Total fee generation by CTC programs according to methodology of CTC Exhibit No. 6	\$16,424.00
(7) Percentage of No. 6 attributable solely to carriage of WCLF in Lakeland	53.17%
(8) Total "fee generation" attributable to carriage <i>other</i> than Lakeland carriage of WCLF	\$ 7,691.19

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(8) Total "fee generation" attributable to carriage <i>other</i> than Lakeland carriage of WCLF	\$ 7,691.19

**ANALYSIS OF PERCENTAGE  
OF PRIME TIME BROADCASTING CARRIED  
ON DISTANT SIGNALS ATTRIBUTABLE TO WCLF-TV**

	<u>No. of Times on WCLF</u>	<u>No. of Other Distant System</u>
SOLO ACT	1	1 <sup>1/</sup>
ACTIONS SIXTIES	5	0
CELEBRATE	1	0
GOOD NIGHT ALIVE	0	0
THE DOWNINGS	1	1 <sup>2/</sup>
WORD FOR THE WORLD	1	0
THE MILLER BROS	1	0
THE GOOD LIFE	<u>5</u>	<u>0</u>
	15	2

\* \* \*

o 88.2% of carriage is attributable to WCLF

---

<sup>1/</sup> KFCB-TV carries Solo Act from 6:30 p.m. to 7:00 p.m. on Friday evening.

<sup>2/</sup> WTJC-TV is the only other station which was carried as a distant signal and in which is listed in Exhibit 11 as carrying The Downings in prime time.



**SELECTED STATIONS CARRIED AS DISTANT SIGNALS**  
**WITH ANALYSIS OF CARRIAGE**

<u>Station</u>	<u>Fees Claimed on Exhibit Six (6)</u>	<u>Carriage From Exhibit Twelve (12)</u>
KFCB	\$2,001	<u>Joy Junction</u> Monday - Friday 3:30 - 4:00 p.m. Saturday 8:30 - 9:00 a.m.  <u>Becky's Barn</u> Tuesday 3:00 p.m.  <u>Solo Act</u> Monday 3:00 - 3:00 a.m. Friday 6:30 - 7:00 p.m.  <u>The Downings</u> Monday 5:00 - 5:30 p.m.
WCFC	\$2,266	<u>Joy Junction</u>  Saturday 10:00 - 10:30 a.m. Thursday 7:00 - 7:30 a.m. Thursday 4:00 - 4:30 p.m.  <u>Sixties Action</u> Monday - Friday 6:30 - 7:30 a.m.  <u>The Downings</u> Tuesday 11:00 - 11:30 a.m.
<u>Next Largest</u>		
WTJC	\$ 883	

**ANALYSIS OF CTC EXHIBIT**  
**NUMBER 6 WITHOUT IMPACT OF WCLF**

<u>Station</u>	<u>Total Fees Generated</u>	<u>CTC Program Percentage</u>	<u>Fee Generation</u>
KFCB	\$ 40,025	5.0	\$2,001
KTBN	30,196	1.2	362
KTBO	14,358	1.2	172
KTBW	2,187	1.2	26
WCFC	51,503	4.4	2,266
WHFT	19,850	1.2	238
WHMB	29,285	.4	117
WHME	3,991	.8	32
WKOI	8,328	1.2	100
WPCB	42,610	2.0	852
WTJC	14,719	6.0	883
	<u>\$257,052</u>		<u>\$7,049</u>

\* \* \*

AVERAGE PERCENTAGE OF TIME: 2.24%

PERCENTAGE OF FEES ATTRIBUTABLE TO CTC ON "TIME BASED"  
FORMULA: 2.7%

DISTANT SUBSCRIBERS

1986

KDTX	0
KFCB	0
	0
KITU	0
KLUJ	0
KNAT	0
KNLC	0
KPAZ	0
KTBN	52,829
	40,750
KTBO	0
	13,268
KTBW	1,227
	0
KYFC	4,643
	4,744
WCFC	46,335
	65,583
WCLF	15,522
	17,160
WDLI	1,188
	1,221
WEFC	0
WEJC	0
WFHL	0
WGGN	0
WHBR	0
WHFT	37,091
	30,449
WHMB	52,494
	50,849
WHME	0
	0
WHTN	0
WKBS	0
WKOI	42,335
	44,140
WLCN	0
WLLA	0
WLXI	0
WLYJ	0
	4,993
WMCF	0
WOAY	0
	0
WPCB	35,861
	39,122
WRDG	0
WSFJ	0
WSWS	0
WTBY	4,726
	0
WTGL	0
WTJC	6,674
	7,064
WTJR	0

1987

KDTX	0
KFCB	79,916
	132,532
KITU	0
KLUJ	0
KNAT	0
KNLC	0
KPAZ	0
KTBN	65,371
	11,105 +
	20,922 pt
KTBO	12,816
	12,756
KTBW	6,951
	0
KYFC	4,722
	0
WCFC	68,618
	65,448
WCLF	15,408
	26,930
WDLI	0
	0
WEFC	0
WEJC	0
WFHL	0
WGGN	0
WHBR	0
WHFT	37,306
	39,846
WHMB	51,039
	52,245
WHME	4,194
	3,588
WHTN	0
WKBS	0
WKOI	44,783
	45,926
WLCN	0
WLLA	0
WLXI	0
WLYJ	0
	5,011
WMCF	0
WOAY	3,856
	0
WPCB	44,036
	29,188
WRDG	0
WSFJ	0
WSWS	0
WTBY	0
	0
WTGL	0
WTJC	0
	7,584
WTJR	0

SETTLING DEVOTIONAL CLAIMANTS  
Cross-Exam Exhibit No. 6X  
Page 2 of 2

WTKK 21,328  
26,048  
WTLJ 0  
WTSF 0

WTKK 0  
0  
WTLJ 0  
WTSF 0

=====

1986-1	322,253
1986-2	345,391

=====

1987-1	439,016
1987-2	432,159
	20,922 p.t.

\* \* \*

- o Only 34.1% increase in full-time subscribers from 1986-1 to 1987-2